

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF MISSOURI  
WESTERN DIVISION**

**UNITED STATES OF AMERICA, )**

**Plaintiff, )**

**vs. )**

**Case No. 98-00311-01-CR-W-GAF**

**EDWIN R. HINESTROZA, )**

**Defendant. )**

**ORDER**

Now pending before the Court is Defendant's Motion to Strike Non-Statutory Aggravating Circumstances of Victim Impact From notice of Intent to Seek Death Penalty Based Upon a Violation of the Indictment Clause of the Fifth Amendment. Defendant argues that the Notice of Intent alleges a non-statutory aggravating factor that is not alleged in the grand jury indictment.

United States Magistrate Judge Sarah W. Hays issued her Report and Recommendation on September 8, 2005. No objections were filed.

Upon careful and independent review of the pending motion, as well as the applicable law, this Court hereby adopts and incorporates as its own Opinion and Order the Report and Recommendation of United States Magistrate Judge Sarah W. Hays.

Accordingly, it is hereby ORDERED that Defendant's Motion to Strike Non-Statutory Aggravating Circumstances of Victim Impact From Notice of Intent to Seek Death Penalty Based Upon a Violation of the Indictment Clause of the Fifth Amendment is OVERRULED and DENIED.

SO ORDERED.

/s/ Gary A. Fenner  
GARY A. FENNER, JUDGE  
United States District Court

DATED: September 26, 2005